

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 09-40081-GAO

PHILIP A. BONADONNA,
Petitioner,

v.

CAROLYN A. SABOL,
Respondent.

OPINION AND ORDER
December 8, 2009

O'TOOLE, D.J.

I. Background

The petitioner, Philip Bonadonna, is currently incarcerated at the Federal Medical Center Devens in Ayer, Massachusetts while serving a forty-year term for conspiracy to import cocaine, importation of cocaine, possession with intent to distribute cocaine, continuing criminal enterprise, and racketeering. He is assigned a Public Safety Factor ("PSF") of "Greatest Severity" under the Bureau of Prison's ("BOP") inmate classification scheme. In April of 2008, he requested a transfer to a minimum security facility in Florida near family members. BOP denied his transfer request due in part to his PSF, which makes him ineligible for a minimum security facility without a PSF waiver. The petitioner appealed the denial of his transfer request and exhausted his administrative remedies before filing this habeas petition under 28 U.S.C. § 2241.

II. Analysis

A. Administrative Procedure Act

BOP exercises sole discretion when assigning inmates to particular facilities. United States v. Melendez, 279 F.3d 16, 18 (1st Cir. 2002). Under 18 U.S.C. § 3621(b), BOP is authorized to make determinations regarding inmate placement and transfer, including whether even to consider transferring an inmate. Muniz v. Sabol, 517 F.3d 29, 36 (1st Cir. 2008).

The petitioner argues that BOP's denial of his transfer request should be reviewable under the Administrative Procedure Act ("APA"). Under § 701(a)(1) of the APA, however, judicial review of agency action is not available when precluded by statute. Here, BOP's determination of the petitioner's place of imprisonment and subsequent denial of his transfer request were made pursuant to its responsibilities described in § 3621(b), which is specifically precluded from review by § 3625 of the same title. Consequently, this Court lacks jurisdiction to review his APA claim.

In his opposition, the petitioner attempts to characterize his claim as a challenge to his PSF classification. He argues that judicial review of the initial and continued classification of inmates is not precluded because BOP's authority to classify inmates derives from 18 U.S.C. § 4081, rather than § 3621(b).¹ His argument is unavailing, however, because the challenge to his PSF is directed at BOP's refusal to waive it when responding to his transfer request. As described above, this Court cannot review BOP's decision-making with regard to the petitioner's transfer request.

¹ In his opposition, petitioner cites a non-existent statute, 18 U.S.C. § 4801. The Court assumes that the petitioner intended to reference § 4081, which involves the classification and treatment of prisoners.

B. Due Process

Even where Congress has sought to preclude judicial review of agency action, a federal court may review colorable constitutional claims. See Webster v. Doe, 486 U.S. 592, 603 (1988). Here, the petitioner asserts that the Due Process Clause of the Fifth Amendment requires additional protections before BOP can deny his transfer request.

The Due Process Clause of the Fifth Amendment protects persons against governmental deprivation of life, liberty, or property. U.S. Const. amend. V. One who seeks to “invoke its procedural protection must establish that one of these interests is at stake.” Wilkinson v. Austin, 545 U.S. 209, 221 (2005). Generally, inmates in the custody of BOP do not have a liberty interest in placement in a particular facility. See Meachum v. Fano, 427 U.S. 215, 224–25 (1976).

A protected interest may arise if a condition of confinement, such as placement, “imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.” Sandin v. Conner, 515 U.S. 472, 484 (1995). Although the petitioner would prefer to be closer to family members in Florida, BOP’s disinclination to transfer him poses no “atypical” or “significant hardship” beyond the norms of prison life. See Dominique v. Weld, 73 F.3d 1156, 1159–61 (1st Cir. 1996) (holding that an inmate did not have a liberty interest in avoiding transfer to a higher security facility when transfer did not increase sentence and conditions were no different from those “ordinarily experienced by large numbers of other inmates”). The petitioner’s challenge does not implicate a constitutionally protected liberty interest, and thus does not sufficiently allege a due process claim.

III. Conclusion

For the foregoing reasons, the respondent's Motion to Dismiss (dkt. no. 8) is GRANTED, and the petition (dkt. no. 1) is DISMISSED.

It is SO ORDERED.

/s/ George A. O'Toole, Jr.
United States District Judge